

AMENDED IN ASSEMBLY JULY 24, 2003

AMENDED IN ASSEMBLY MAY 13, 2003

AMENDED IN SENATE MARCH 3, 2003

SENATE BILL

No. 109

Introduced by Senator Torlakson

January 30, 2003

An act to amend Section 33080.8 of, ~~and to add Section 33080.10 to,~~
the Health and Safety Code, relating to redevelopment.

LEGISLATIVE COUNSEL'S DIGEST

SB 109, as amended, Torlakson. Redevelopment: major audit violations.

The Community Redevelopment Law requires the Controller to send to the Attorney General, for prescribed action, a list of redevelopment agencies that have uncorrected major violations, as defined, of the redevelopment law.

This bill would characterize those major violations, instead, as major audit violations; require the Controller to send relevant documents and affidavits to the Attorney General with that list; require the agency to respond to any action filed by the Attorney General within 15 days of service; require the agency to forfeit a prescribed amount to the state if the court determines after a subsequent hearing that the agency has not corrected a major audit violation; and include additional matters within the definition of a major audit violation.

~~Existing law requires every redevelopment agency to present an annual report to its legislative body that includes an independent financial audit for the previous fiscal year.~~

~~This bill would authorize the Controller to perform quality control reviews of those independent financial audit reports and would prescribe penalties for violations of audit requirements, including action by the California Board of Accountancy in cases of unprofessional conduct by the independent auditor.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 33080.8 of the Health and Safety Code
2 is amended to read:

3 33080.8. (a) On or before April 1 of each year, the Controller
4 shall compile a list of agencies that appear to have major audit
5 violations as defined in this section, based on the independent
6 financial audit reports filed with the Controller pursuant to Section
7 33080.

8 (b) On or before June 1 of each year, for each major audit
9 violation of each agency identified pursuant to subdivision (a), the
10 Controller shall determine if the agency has corrected the major
11 audit violation. Before making this determination, the Controller
12 shall consult with each affected agency. In making this
13 determination, the Controller may request and shall receive the
14 prompt assistance of public officials and public agencies,
15 including, but not limited to, the affected agencies, counties, and
16 cities. If the Controller determines that an agency has not corrected
17 the major audit violation, the Controller shall send a list of those
18 agencies, their major violations, all relevant documents, and the
19 affidavits required pursuant to subdivision (d) to the Attorney
20 General for action pursuant to this section.

21 (c) For each agency that the Controller refers to the Attorney
22 General pursuant to subdivision (b), the Controller shall notify the
23 agency and the legislative body that the agency was on the list sent
24 to the Attorney General. The Controller's notice shall inform the
25 agency and the legislative body of the duties imposed by Section
26 33080.2.

27 (d) Within 45 days of receiving the referral from the Controller
28 pursuant to subdivision (b), the Attorney General shall determine
29 whether to file an action to compel the agency's compliance with
30 this part. Any action filed pursuant to this section shall be



1 commenced in the County of Sacramento. The time limit for the
 2 Attorney General to make this determination is directory and not
 3 mandatory. Any action shall be accompanied by an affidavit or
 4 affidavits, to be provided by the Controller with the referral,
 5 setting forth facts that demonstrate a likelihood of success on the
 6 merits of the claim that the agency has a major audit violation. The
 7 affidavit shall also certify that the agency and the legislative body
 8 were informed not less than 10 days prior to the date on which the
 9 action was filed. The agency shall file a response to any action filed
 10 by the Attorney General pursuant to this section within 15 days of
 11 service.

12 (e) (1) On the earliest day that the business of the court will
 13 permit, but not later than 45 days after the filing of an action
 14 pursuant to this section, the court shall conduct a hearing to
 15 determine if good cause exists for believing that the agency has a
 16 major audit violation and has not corrected that violation.

17 (2) If the court determines that no good cause exists or that the
 18 agency had a major audit violation but corrected the major audit
 19 violation, the court shall dismiss the action.

20 (3) If the court determines that there is good cause for believing
 21 that the agency has a major audit violation and has not corrected
 22 that major audit violation, the court shall immediately issue an
 23 order that prohibits the agency from doing any of the following:

24 (A) Encumbering any funds or expending any money derived
 25 from any source except to pay the obligations designated in
 26 subparagraphs (A) to (G), inclusive, of paragraph (1) of
 27 subdivision (e) of Section 33334.12.

28 (B) Adopting a redevelopment plan.

29 (C) Amending a redevelopment plan except to correct the
 30 major audit violation that is the subject of the action.

31 (D) Issuing, selling, offering for sale, or delivering any bonds
 32 or any other evidence of indebtedness.

33 (E) Incurring any indebtedness.

34 (f) In a case that is subject to paragraph (3) of subdivision (e),
 35 the court shall also set a hearing on the matter within 60 days.

36 (g) If, on the basis of that subsequent hearing, the court
 37 determines that the agency has a major audit violation and has not
 38 corrected that violation, the court shall order the agency to comply
 39 with this part within 30 days, and order the agency to forfeit to the
 40 state no more than:

1 (1) Two thousand dollars (\$2,000) in the case of a community
2 redevelopment agency with a total revenue, in the prior year, of
3 less than one hundred thousand dollars (\$100,000) as reported in
4 the Controller's annual financial reports.

5 (2) Five thousand dollars (\$5,000) in the case of a community
6 redevelopment agency with a total revenue, in the prior year, of at
7 least one hundred thousand dollars (\$100,000) but less than two
8 hundred fifty thousand dollars (\$250,000) as reported in the
9 Controller's annual financial reports.

10 (3) Ten thousand dollars (\$10,000) in the case of a community
11 redevelopment agency with a total revenue, in the prior year, of at
12 least two hundred fifty thousand dollars (\$250,000) as reported in
13 the Controller's annual financial reports.

14 (h) The order issued by the court pursuant to paragraph (3) of
15 subdivision (e) shall continue in effect until the court determines
16 that the agency has corrected the major audit violation. If the court
17 determines that the agency has corrected the major audit violation,
18 the court may dissolve its order issued pursuant to paragraph (3)
19 of subdivision (e) at any time.

20 (i) An action filed pursuant to this section to compel an agency
21 to comply with this part is in addition to any other remedy, and is
22 not an exclusive means to compel compliance.

23 (j) As used in this section, "major audit violation" means that,
24 for the fiscal year in question, an agency did not:

25 (1) File an independent financial audit report that substantially
26 conforms with the requirements of subdivision (a) of Section
27 33080.1.

28 (2) File a fiscal statement that includes substantially all of the
29 information required by Section 33080.5.

30 (3) Establish time limits, as required by Section 33333.6.

31 (4) Deposit all required tax increment revenues directly into the
32 Low and Moderate Income Housing Fund upon receipt, as
33 required by Section 33334.3, 33334.6, 33487, or 33492.16.

34 (5) Establish a Low and Moderate Income Housing Fund, as
35 required by subdivision (a) of Section 33334.3.

36 (6) Accrue interest earned by the Low and Moderate Income
37 Housing Fund to that fund, as required by subdivision (b) of
38 Section 33334.3.

39 (7) Determine that the planning and administrative costs
40 charged to the Low and Moderate Income Housing Fund are

1 necessary for the production, improvement, or preservation of
2 low- and moderate-income housing, as required by subdivision (d)
3 of Section 33334.3.

4 (8) Initiate development of housing on real property acquired
5 using moneys from the Low and Moderate Income Housing Fund
6 or sell the property, as required by Section 33334.16.

7 (9) Adopt an implementation plan, as required by Section
8 33490.

9 ~~SEC. 2. Section 33080.10 is added to the Health and Safety~~
10 ~~Code, to read:~~

11 ~~33080.10. (a) The Controller may perform quality control~~
12 ~~reviews of the independent financial audit reports required by~~
13 ~~Section 33080.1. The Controller shall communicate the results of~~
14 ~~his or her reviews to the independent auditor and the~~
15 ~~redevelopment agency for which the audit was performed, and~~
16 ~~shall review his or her findings with the independent auditor.~~

17 ~~(b) If the quality control review of the Controller indicates that~~
18 ~~the independent auditor conducted the audit in a manner that may~~
19 ~~constitute unprofessional conduct, as defined pursuant to Section~~
20 ~~5100 of the Business and Professions Code, including, but not~~
21 ~~limited to, gross negligence resulting in a material misstatement in~~
22 ~~the audit, the Controller shall refer the case to the California Board~~
23 ~~of Accountancy. If the California Board of Accountancy finds that~~
24 ~~the independent auditor conducted an audit in an unprofessional~~
25 ~~manner, the independent auditor shall not perform any audit for an~~
26 ~~agency for a period of three years, in addition to any other penalties~~
27 ~~that the California Board of Accountancy may impose.~~

28 ~~(c) In any matter that the Controller refers to the California~~
29 ~~Board of Accountancy pursuant to subdivision (b), the Controller~~
30 ~~may suspend the independent auditor from performing any audits~~
31 ~~for an agency pending the final disposition of the matter by the~~
32 ~~California Board of Accountancy if the Controller gives the~~
33 ~~independent auditor notice and an opportunity to respond to that~~
34 ~~proposed suspension. The independent auditor shall be given~~
35 ~~credit for any period of suspension if the California Board of~~
36 ~~Accountancy prohibits the independent auditor from performing~~
37 ~~audits of redevelopment agencies under subdivision (b). In no~~

- 1 ~~event may the Controller suspend an independent auditor pursuant~~
- 2 ~~to this subdivision for a period of longer than three years.~~

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